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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: FEB 24 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an academic professional at the Georgia Institute of Technology (Georgia Tech), Atlanta. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and supporting exhibits.

The AAO notes that, in prior submissions, [redacted] was the petitioner's attorney of record. The record, however, contains no evidence of [redacted] involvement with the preparation or filing of the appeal. The appeal does not include a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). Given the absence of this required form, and the complete absence of any indication that [redacted] is still the petitioner's attorney of record, the AAO considers the petitioner to be self-represented at this time. In this decision, the term "prior counsel" shall refer to [redacted].

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 13, 2010. In an accompanying statement, prior counsel stated that the petitioner "has demonstrated outstanding expertise in instructional technology, particularly as it relates to the foundational research and development of distance and online education." Prior counsel contended that the petitioner's "innovative and novel contributions . . . prove her ability to provide significant, essential, and vital benefits to critical national interests. She has a truly impressive record of success that has had a considerable impact on her field."

Prior counsel asserted that the labor certification process cannot take the petitioner's special expertise and contributions into account, and "failure to consider these factors could result in a denial of a labor certification." Prior counsel therefore concluded that "requiring a labor certification would adversely affect the national interest."

Prior counsel's hypothetical conjecture about labor certification is now moot. There is no longer any question of whether or not an employer could obtain a labor certification on the petitioner's behalf. USCIS records show that, on May 6, 2011, Georgia Tech applied for such a labor certification. The Department of Labor approved the labor certification on July 7, 2011, and Georgia Tech used it to file a new Form I-140 petition on August 1, 2011. The director approved that petition four days later, on August 5, 2011.

Five witness letters accompanied the initial filing. [redacted] chaired the petitioner's doctoral committee there. [redacted] stated:

> [The petitioner] worked with me to design, develop, and implement distance classes and we looked into how various technologies could be creatively and effectively used for distance education. These courses have been successfully implemented and become the core curriculum of the online master program in Educational Technology at Texas Tech.
>
> . . . Her dissertation investigated the use of animation and simulation for online training. . . . [S]he innovatively integrated different types of simulations into the software training, which enabled learners to interact with the multimedia training program she designed and developed. She found that simulations benefit software application learning and simulation with learner control is the most effective learning practice. This finding is very significant. . . . Through the dissemination of her work, [the petitioner] has not only made great contributions to the critical area of information technology, but also made herself well known as an outstanding researcher among the international research community.

Two Georgia Tech faculty members provided letters. The petitioner's supervisor, [redacted] stated:

> During the past five years, [the petitioner] has provided critical and timely support to the campus by consulting with faculty individually and in training workshops about using technology in on-line (and hybrid) course design and delivery. . . . She has helped

> faculty members develop on-line curricula, instructional materials, multimedia components, learning objects, and overall course design, all of which have served to greatly improve the quality of both on-line and face-to-face courses.
>
> In 2006, [redacted] an open-source software, to be its learning management system. To help faculty with the transition to the new system, [the petitioner] designed and developed printed and digital training manuals, documentations, and tutorials on how to use the system. [redacted] has been adopted by more than 200 well-known institutions in the US and abroad. It is impressive that these resources created by [the petitioner] have become important tools used by many other institutions in the [redacted] community. [The petitioner] has also served as an important liaison between faculty and the development team of T-Square, the [redacted] installation at Georgia Tech. . . . . [The petitioner's] efforts and her instructional technology expertise have significantly contributed to the success of the T-Square team. Georgia Tech has become a leading member in the Sakai community with its continuous contributions to the development of the system, which in turn is attracting more and more institutions around the world to adopt it for teaching, learning, and collaborative research.

The petitioner submitted no documentary evidence to show how many institutions use the [redacted] training materials that the petitioner developed, and [redacted] did not explain how she knew that "many other institutions" use those materials. Because [redacted] did not identify the "many other institutions," this unsupported claim is impossible to verify. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

[redacted] stated: "It is extremely hard to find a Chinese language teacher who is also skillful in online teaching. [The petitioner] is no doubt a perfect candidate for this challenging task. . . . [The petitioner] teaches both elementary and intermediate online Chinese classes." [redacted] credited the petitioner with "significant contributions to the design and development of these courses," as well as providing "support, training, and consultations to all instructors who teach online foreign languages on the effective use of instructional technology."

[redacted] is the editor of the journals *Quarterly Review of Distance Education* and *Distance Learning*. [redacted] discussed articles that the petitioner submitted to those journals:

> [The petitioner's] article, [redacted] was published in *Distance Learning* in 2004. In this article, [the petitioner] discussed how to effectively use alternatives for both course development and interaction in distance learning when course management systems (CMS) are not available or affordable. . . .

> [I]t was very significant that [the petitioner] and her colleagues explored the potential for developing online courses using alternatives to a CMS. . . .
>
> Another article by [the petitioner], [redacted] was published in *Quarterly Review of Distance Education* in 2007. . . . [V]ery few articles look into synchronous communication in distance learning. The research study done by [the petitioner] and her colleagues was thus innovative and significant. They have proven that synchronous communication could facilitate students' collaboration in online classes. . . .
>
> It is my professional judgment that [the petitioner] stands out as an exceptionally talented researcher who possesses a unique set of skills and profound understanding in learning technologies, learning theories, and research methodology in distance education. What is more valuable is that [the petitioner's] involvement with the field has enabled her to have a deeper understanding of pedagogical application and practices that are not commonly seen in many researchers. . . .
>
> [The petitioner's] exemplary work has made her one of the most outstanding professionals in instructional technology and distance education.

[redacted] stated:

> In 2008 I selected [the petitioner] as a member of the review board because of her outstanding research on multimedia learning. Since then, [the petitioner] has provided excellent services that help ensure high quality of the manuscripts published in EMI.
>
> . . . The results of her research studies, particularly those on the use of animation and simulation for online training, have become the practical guidance for the design and development of online training. Without question [the petitioner] has established herself as an outstanding researcher with international recognition in the field of educational media.

The process described in the first paragraph above appears to be peer review, the routine vetting of manuscripts submitted for publication in scholarly journals. Supporting this conclusion are copies of electronic mail messages from [redacted] asking the petitioner to review manuscripts.

The petitioner submitted copies of four articles that she co-authored between 2004 and 2007. Three of these articles reported original research. The fourth, published in Educational Technology in 2004, is essentially a reference guide, listing and describing journals and other resources available to distance learning professionals. The petitioner was a doctoral student throughout that entire period. Doctoral studies entail original research as a matter of course. The record contains no evidence that the petitioner

has produced any published work, or conducted research for publication, since she completed her doctoral studies in 2008.

The petitioner's conference presentations fell within the same period, coinciding with her doctoral studies. Two presentations took place after the petitioner graduated from Texas Tech, but the petitioner's co-authors were both on the Texas Tech faculty, indicating that the research took place at Texas Tech but was not ready for presentation until after the petitioner had moved to Georgia Tech.

The petitioner documented twelve citations of her work: two of a 2004 presentation in [redacted]

[redacted]

The initially submitted materials show that the petitioner produced published research during her doctoral studies at Texas Tech, and that she has helped Georgia Tech in its transition to the [redacted] system, but fell short of supporting some witnesses' claims that the petitioner had earned a significant international reputation in her field.

On December 17, 2010, the director issued a request for evidence, stating that the petitioner's initial submission did not establish the level of impact and influence necessary to qualify for the waiver. In response, the petitioner submitted three further letters, all from witnesses who stated that they are not personally acquainted with the petitioner. [redacted] of the University of Sydney, Australia, stated that he became familiar with the petitioner's work through her presentations at annual meetings of the American Educational Research Association. [redacted] description of the significance of the petitioner's work is similar to passages from the earlier letter from [redacted] For instance, [redacted] stated: that the petitioner "innovatively integrated different types of simulations into the software training, which enabled learners to interact with the multimedia training program she designed and developed. She found that simulations benefit software application learning and simulation with learner control is the most effective learning practice. This finding is very significant." [redacted], in comparison, stated that the petitioner "further explored the effectiveness of different types of simulations she designed and developed. She found that simulation with learner control is the most effective learning practice. This finding is of great significance."

As another example, [redacted] stated that the petitioner's "great contributions" made her "well known as an outstanding researcher among the international research community." [redacted] stated: "Her great contributions to this field have gained her an international reputation as an outstanding researcher and practitioner."

[redacted], stated:

> I am internationally recognized for my expertise in the Sakai open source collaborative learning environment. . . .

> [T]he development of [redacted] is deeply collaborative and its success depends on the contributions of community members. [The petitioner] is one of the members who have made significant contributions to the Sakai community. . . . [The petitioner] designed and developed both printed and digital documentations and tutorials on how to use the system. Her pioneering work has been published online and is being used not only by Georgia Tech but also other institutions as well.

Like prior witnesses. [redacted] offered only the general assertion that "other institutions" use the petitioner's Sakai training materials. Without corroborating evidence or even identifying information, this claim is too vague to carry significant weight.

[redacted] praised the petitioner's "successful exploration of alternatives to course management systems (CMS) for online teaching." [redacted], an alumnus of Texas Tech, stated:

> [The petitioner] has designed, developed and implemented online courses by creatively combining different technologies that are free to educators. Her innovative and successful experience has no doubt provided an excellent model for offering cost-effective online education. . . . There is no doubt that this model of instructional design has greatly influenced educators and educational technology practitioners in applying technologies in their classrooms.

Stating "[t]here is no doubt" that the petitioner's model is in widespread use is not the same thing as showing it to be the case.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of the petitioner's influence without corroboration or details. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The director denied the petition on February 8, 2011. The director quoted several of the witness letters and acknowledged some of the petitioner's evidentiary submissions, but found that the petitioner had not shown that her contributions to her field stand out to such an extent that they warrant the special benefit of a national interest waiver.

On appeal, the petitioner asserts that the director "did not take into consideration [her] contributions to the field of foreign language education." The petitioner does not specify what those contributions were, or why they should qualify her for the waiver. The petitioner's previous submissions put little emphasis on her work in "foreign language education." Only one of the witnesses [redacted] even mentioned that the petitioner taught Chinese language classes. Teaching a Chinese language class is not inherently a "contribution[] to the field of foreign language education," whether the course is online or in a traditional classroom setting. There is no blanket waiver for language teachers, and the petitioner has done little more than show that she teaches language classes.

The appeal includes new documentation regarding the petitioner's proposal for a project called [redacted] The proposal documents are dated February 24, 2011, more than two weeks after the director denied the petition. These materials did not exist at the time of the director's decision, and therefore the director clearly could not have taken them into account.

Even if the petitioner had shown that this new project is now an influential contribution to language education rather than an embryonic proposal, an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner asserts that the director "did not make an accurate appraisal [of her] contributions to the Sakai project." The record, however, lacks objective measures of the significance of those contributions. The petitioner simply declares her work to be significant. The petitioner states, for example, that "having fifteen papers accepted by . . . prestigious peer-reviewed conferences is by no means common," but she cites no independent, verifiable evidence to support this claim. Similarly, the petitioner asserts that she "had been invited to review other researchers' work by an international journal," but she submits nothing to show that participation in peer review is a rare privilege rather than a duty expected of researchers who, themselves, produce work that requires peer review.

The petitioner correctly asserts that citations are not the only means by which to gauge a researcher's impact, but in this instance the petitioner provided little else. The petitioner asserts that she provided "five reference letters from independent experts in the United States and abroad." The AAO has considered these letters, as discussed above. Such letters are not without weight, but they cannot fully replace objective documentary evidence, particularly with regard to claims of fact rather than matters of expert opinion.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.